

To: Sisk, Richard[Sisk.Richard@epa.gov]
From: Way, Steven
Sent: Sat 10/3/2015 7:43:13 PM
Subject: RE: Appropriate access agreement document
Citizen Name/Ex. s access agreement 10-4-15Draft.doc

Richard,

Please review the attached Access form and edit as necessary,

Thanks,

Steve

Steven Way

Federal On-Scene Coordinator

Emergency Response Unit

US EPA - Region 8

1595 Wynkoop Street

Denver, CO 80202

Office: 303-312-6723

From: Sisk, Richard
Sent: Saturday, October 03, 2015 10:55 AM
To: Davis, Joe; Way, Steven
Cc: Barry, Michael; Hess, Stephen; Bohan, Suzanne; Ward, W. Robert; Rudy, Michael; Ostrander, David; Fagen, Elizabeth; Madigan, Andrea; Land, Kelcey; Urdiales, Aaron
Subject: RE: Appropriate access agreement document

Here are my comments and suggested edits for this “agreement.” Again, EPA at this site has not been telling anyone that we will sign an “access agreement” with them. We have only been asking for a consent for access and we are willing to accept reasonable conditions on that access.

Richard Sisk
Attorney
U.S. EPA Region 8
ENF-L
1595 Wynkoop
Denver, CO 80202-1129

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From: Davis, Joe
Sent: Saturday, October 03, 2015 9:19 AM
To: Way, Steven
Cc: Barry, Michael; Hess, Stephen; Bohan, Suzanne; Ward, W. Robert; Rudy, Michael; Sisk, Richard; Ostrander, David
Subject: RE: Appropriate access agreement document

Steve,

Thanks for the additional information. If you talk with Citizen Name/Ex. 6 (or his partner) today, make it clear that that any access agreement signed by the parties would not limit or wave future rights to make a claim under the Federal Tort Claims Act.

All,

Steve is indicating that the ENF Staff may have been developing an Access Agreement early on in the response?

If this is not the case, I am attached is a draft Standard Access Agreement with the property description found on the San Juan County Assessor's web site (for **Citizen Name/Ex. 6**). I have also added the statement "This Access Agreement does not limit or waive future rights of the grantor to submit claims under the Federal Tort Claims Act." In the "Liability" section.

Please review the document and let me know if you have any comments.

Thanks,

Joe Davis,

Temporary:

Deputy Incident Commander, Durango ICP

Permanent:

Federal On-Scene Coordinator

Hazmat/Oil/Disaster Response

USEPA Region 7

8600 Underground Rd., Pillar 253

Kansas City, Missouri 64161

(913) 551-7909

To report oil and chemical spills call the National Response Center at (800) 424-8802

From: Way, Steven

Sent: Saturday, October 03, 2015 7:39 AM

To: Davis, Joe <Davis.Joe@epa.gov>

Cc: Barry, Michael <Barry.Michael@epa.gov>; Hess, Stephen <Hess.Stephen@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; Ward, W. Robert <Ward.Robert@epa.gov>; Rudy, Michael <Rudy.Mike@epa.gov>; Sisk, Richard <Sisk.Richard@epa.gov>; Ostrander, David <Ostrander.David@epa.gov>; Way, Steven <way.steven@epa.gov>

Subject: RE: Appropriate access agreement document

Joe,

Hopefully, there is coordination with the ENF staff who have worked on our access questions since the beginning of this. Mike Rudy and Liz Fagan (RPM) are looking into the contacts made in August, which may include [Citizen Name/Ex. 6].

Also, on multiple occasions at the site, I met with [Citizen Name/Ex. 6] (owner) and an owner partner [Citizen Name/Ex. 6] [Citizen Name/Ex. 6] who were working on their cabin. We sat together at the base of the Gold King mine waste rock dump and discussed the operations and our plans to regrade the dump and remove the small settling basin at the base of the dump. The settling basin was placed within the first days after August 5. The settling basin will be removed as soon as the flow from the mine is contained within the piping being installed and not flowing in the North Fork Cement Creek channel. It is anticipated that will be completed by October 30.

The road access that may cross the claim that they own has been in place for many decades – as long as the mine has been there. The county surveyor is in the final stages of locating the mine claim corners in the area around that Gold King mine dump. It is not yet certain that the claim boundaries are exactly as shown in the imagery provided by the owner.

During the meetings with [Citizen Name/Ex. 6] and the owner partner, they expressed none of the concerns

stated in the email from [Citizen Name/Ex. 6]. They understood the need for the temporary pond and understood that the access to the mine was ongoing. At no time did they indicate any claim of trespassing or request that we not continue using the access road. By the way, it would entirely infeasible to access the Gold King mine – 7 Level from any other route.

I will attempt to contact [Citizen Name/Ex. 6] today.

If you have additional questions on this matter please let me know.

Steven Way

Federal On-Scene Coordinator

Emergency Response Unit

US EPA - Region 8

1595 Wynkoop Street

Denver, CO 80202

Office: 303-312-6723

From: Davis, Joe

Sent: Friday, October 02, 2015 2:23 PM

To: Way, Steven

Cc: Barry, Michael; Hess, Stephen; Bohan, Suzanne; Ward, W. Robert

Subject: Appropriate access agreement document

Steve,

We have been discussing this access issue with Bob Ward (R8 counsel) and Steve Hess (HQ

counsel). Bob and Steve are going to work on the appropriate access agreement document. It looks like the property owners live here in Durango, so we may be able to get signatures from the ICP.

Did you get a product from the San Juan County Surveyor? Can you email it to this group? (or I could drive up and meet you in Silverton..). Counsel will likely need this to develop the agreement.

Thanks,

Joe,

Temporary:

Deputy Incident Commander, Durango, CO

Permanent:

Federal On-Scene Coordinator

Hazmat/Oil/Disaster Response

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